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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY)	CASE NO. CV03-3132 FVS
COMMISSION,)	
Plaintiff,)	
)	
and)	CONSENT DECREE AND
)	ORDER OF DISMISSAL
)	
MARIA R. RAMIREZ, GABRIELA URIBE)	
AND MARIA CARDENAS,)	
)	
Plaintiff-Intervenors,)	
)	
v.)	
)	
HIGHLAND FRUIT GROWERS, INC.,)	
)	
Defendant.)	

I. INTRODUCTION

1. This action originated with discrimination charges filed by Maria R. Ramirez, Gabriela Uribe, Teresa Valle, and Maria Cardenas ("Charging Parties") with the Equal Employment Opportunity Commission ("EEOC"). The Charging Parties alleged that Highland Fruit Growers, Inc., ("Highland Fruit") discriminated against them on the basis of sex by

1 subjecting them to sexual harassment, retaliation, and/or constructive discharge, in violation of
 2 Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq.

3 2. The EEOC sent Highland Fruit a Letter of Determination with findings of
 4 reasonable cause that it had violated Title VII.

5 3. The Commission filed this lawsuit on September 29, 2003 in the United States
 6 District Court for the Eastern District of Washington on behalf of the charging parties.

7 4. The EEOC, Charging Parties and Defendant, Highland Fruit want to conclude all
 8 claims of the charging parties without expending further resources in contested litigation.

9 **II. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT**

10 5. This Consent Decree is not an admission of wrongdoing or an adjudication or
 11 finding on the merits of the case. This Consent Decree shall not be used as evidence of liability
 12 or for purposes of res judicata or collateral estoppel in any legal proceeding against the
 13 Defendant. Neither the agreement to enter this Decree, nor the Decree shall be admissible in any
 14 proceeding as an admission by Defendant of any violation of, failure to comply with,
 15 interference, retaliation or obstruction of compliance with Title VII or any other employment law
 16 or order.

17 **III. SETTLEMENT SCOPE**

18 6. This Consent Decree is the final and complete resolution of all allegations of
 19 unlawful employment practices contained in the complaint filed herein on behalf of the charging
 20 parties by the EEOC, and joined in on my the Intervenor, including all claims for attorney fees
 21 and costs. The terms of this Consent Decree shall apply to employees at Defendant Highland
 22 Fruit's Yakima, Washington facility. The Consent Decree resolves all issues and claims arising
 23 out of this Complaint and is binding and final as to all such issues and claims.
 24
 25

IV. JURISDICTION AND VENUE

7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. Plaintiff EEOC's action is authorized pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e-5(f)(1) and (3) and 2000e-6 ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The employment practices alleged to be unlawful in the EEOC's Complaint filed herein occurred within the jurisdiction of the United States District Court for the Western District of Washington.

V. DEFINITION OF TERMS

For the purposes of this Consent Decree, the following definitions shall apply:

8. "The Effective Date of the Consent Decree" is the date the United States District Court for the Eastern District of Washington enters the Consent Decree and (Proposed) Order of Dismissal.

9. Unless otherwise indicated, the word "days" refers to calendar days.

10. "Formal or Informal Complaints" includes any complaint, whether written or oral, made to a manager or supervisor with the Defendant.

VI. MONETARY RELIEF

11. In settlement of the EEOC's and the Plaintiff-Intervener's claims in this lawsuit, Defendant Highland Fruit has agreed to pay the Intervenor the total lump sum of \$150,000.00 .

VII. INJUNCTIVE RELIEF

A. Compliance with Title VII

12. Defendant Highland Fruit reaffirms its commitment to comply with Title VII. To further this commitment, the Defendant Highland Fruit shall monitor the affirmative obligations of this Consent Decree. The terms of this Consent Decree apply to all employees of Defendant Highland Fruit.

1 13. Defendant Highland Fruit will not retaliate against any employee for opposing a
2 practice deemed unlawful by Title VII or for making a charge, testifying, assisting, or
3 participating in any investigation, proceeding, or hearing associated with this action.

4 14. Defendant Highland Fruit, its officers, agents, and employees are hereby enjoined
5 from engaging in personnel practices which unlawfully discriminate against applicants and
6 employees in violation of Title VII. In recognition of its obligations under Title VII, Defendant
7 Highland Fruit will institute the policies and practices set forth below.

8 **B. Retention of a Consultant**

9 15. Defendant Highland Fruit will retain, at Highland Fruit's expense, a consultant to
10 conduct an internal review and audit of Highland Fruit's anti-discrimination and harassment
11 policies, practices and procedures. With the assistance of the consultant, Highland Fruit will
12 either enhance or adopt a written policy that sets forth its anti-discrimination and harassment
13 policies and reporting mechanisms.

14 16. Defendant Highland Fruit will distribute the new anti-discrimination and
15 harassment policy in English and Spanish to all employees within 45 days after entry of this
16 decree.

17 17. This policy will be distributed to all present and future employees, both
18 management and non-management, in Defendant Highland Fruit's Yakima, Washington
19 facilities, beginning 45 days after entry of this decree and continuing for the duration of the
20 decree. Distribution to temporary employees may consist of notification of the existence and the
21 location of the policy.

22 18. Defendant Highland Fruit affirms the following "Statement of Zero-Tolerance
23 Policy and Workplace Objectives":

24 Highland Fruit is firmly committed to developing and maintaining a zero-
25 tolerance policy concerning discrimination, sexual harassment and retaliation
against individuals who report discrimination or harassment in the company's

workplace; to swiftly and firmly responding to any acts of discrimination, sexual harassment or retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of discrimination, sexual harassment or retaliation; and to actively monitoring its workplace in order to ensure tolerance, respect and dignity for all people.

19. In order to effectuate the objectives embodied in the Defendant Highland Fruit's Statement of Zero-Tolerance Policy and Workplace Objectives and this Decree, the Defendant Highland Fruit will ensure the following policies, procedures, and practices are in effect:

(a) Complaint Procedures.

(i) Defendant Highland Fruit agrees that it will provide the name, job title, work location, and telephone number of the management employees charged with investigating such issues in its written expanded sexual harassment policy . That information will also be routinely and continuously posted. If the name or designation of the management employees charged with investigating issues of discrimination, sexual harassment, and retaliation change, defendant will re-post his or her name, job title, work location, and telephone number.

(ii) Defendant Highland Fruit agrees that it shall enable complaining parties to be interviewed by Defendant Highland Fruit about their complaints in such a manner that permits the complaining party, at such party's election, to remain inconspicuous to all of the employees in such party's work area. Defendant Highland Fruit agrees that its complaint procedure shall not impose upon individuals

1 seeking to make a complaint alleging discrimination,
2 sexual harassment and/or retaliation any requirements that
3 are more burdensome than are imposed upon individuals
4 who make other complaints of comparable gravity.

5 (iii) Defendant Highland Fruit agrees that it shall ensure that its
6 policies and procedures provide that complaint handling
7 and disciplinary procedures regarding all complaints of
8 discrimination, sexual harassment and/or retaliation are
9 investigated and addressed promptly. Specifically,
10 Defendant Highland Fruit agrees that it shall investigate all
11 complaints of discrimination, sexual harassment and/or
12 retaliation promptly and to complete investigations within
13 three (3) weeks. Defendant Highland Fruit will further
14 make its best effort to prepare its written findings of the
15 results of each investigation and the remedial actions
16 proposed within seven (7) days after completion of the
17 investigation, and shall thereupon promptly communicate
18 to the complaining party the results of the investigation and
19 the remedial actions taken or proposed, if any. Such
20 communication will reasonably take into account the
21 privacy of the accused.

22 (iv) Defendant Highland Fruit agrees that it shall make its best
23 effort to ensure that appropriate remedial action is taken to
24 resolve complaints and to avoid the occurrence of
25 discrimination, sexual harassment and/or retaliation.

1 Defendant Highland Fruit further agrees that it shall
2 provide for substantial discipline up to and including
3 termination -- including, but not limited to, suspension
4 without pay as a possible consequence for violations of its
5 anti-discrimination and harassment policy.

6 (b) Policies Designed To Promote Supervisor Accountability.

7
8 (i) Defendant Highland Fruit agrees that it shall impose
9 substantial discipline -- up to and including demotion,
10 suspension without pay or termination upon any supervisor
11 or manager who engages in discrimination or sexual
12 harassment or permits any such conduct to occur in his or
13 her work area or among employees under his or her
14 supervision, or who retaliates against any person who
15 complains or participates in any investigation or
16 proceeding concerning any such conduct. Defendant
17 Highland Fruit shall communicate this policy to all of its
18 supervisors and managers.

19 (ii) Defendant Highland Fruit agrees that it shall
20 continue to advise all managers and supervisors of their
21 duty to actively monitor their work areas to ensure
22 employees' compliance with the company's anti-
23 discrimination and harassment policy, and to report any
24 incidents and/or complaints of harassment, sexual
25 harassment and/or retaliation of which they become aware
to the department charged with handling such complaints.

1 (iii) Defendant Highland Fruit agrees that any failure to
2 comply with this policy will be considered in evaluating its
3 managers, including when they are being considered for
4 promotions.

5 (c) Anti-Discrimination and Harassment Training.

6
7 (i) Defendant Highland Fruit agrees that it shall
8 provide annual ant-discrimination and sexual harassment
9 training to all employees, and supervisors; to provide anti-
10 discrimination and sexual harassment training to all senior
11 managers; and to provide training to all persons charged
12 with the handling of complaints of discrimination, sexual
13 harassment and/or retaliation in the workplace, and the
14 techniques for investigating and stopping it. This training
15 shall include issues regarding discrimination and sexual
16 harassment by employees and/or customers or vendors of
17 Defendant Highland Fruit. Defendant Highland Fruit
18 understands and agrees that this training, particularly that
19 directed towards senior managers, may require one-on-one
20 training or educational sessions.

21 (ii) Defendant Highland Fruit agrees that all training
22 required by this Decree shall be conducted in both English
23 and Spanish by educators, consultants or attorneys
24 experienced in the area of anti-discrimination and
25 harassment training.

(iii) Defendant Highland Fruit agrees that it shall require owner Robert Ball to introduce the annual anti-discrimination and harassment training to communicate Defendant Highland Fruit's commitment to its Statement of Zero-Tolerance Policy and anti-harassment policy.

C. Expunging Records

20. Defendant Highland Fruit will not disclose any information or make references to any charges of discrimination or this lawsuit in responding to employment reference requests for information about Maria R. Ramirez, Gabriela Uribe, Teresa Valle and Maria Cardenas. In response to any inquiries, Defendant Highland Fruit shall provide employment references that includes only dates of employment and positions held. Highland Fruit will provide each of the Plaintiff-Intervenors a reference letter on Highland Fruit letterhead confirming dates of employment, positions held, final rate of pay, and a statement that the employee "performed satisfactorily." Defendant Highland Fruit may produce personnel information involving these charging parties if it is responding to any third party lawful subpoena.

21. Defendant Highland Fruit will expunge from the Charging Parties' personnel files, any references to a charge of discrimination against Defendant Highland Fruit and this lawsuit. Defendant Highland Fruit will not add any information or references to charging parties' personnel files or records regarding their charge of discrimination and this lawsuit after such references have been expunged. Files containing information about the charging parties that have been developed during the subject litigation will be maintained in files separate and apart from the charging parties' personnel files. Any such files shall be maintained by Highland Fruit at its own business offices, or at the offices of its legal counsel, at Highland's option. Defendant Highland Fruit will make the charging parties' personnel files available for inspection

1 by their counsel or the individual charging parties either at the Defendant Highland Fruit's
2 Yakima, Washington facility or at the offices of its legal counsel.

3 **D. Reporting**
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5 22. Six months following the entry of this Decree and every six months thereafter for
6 the duration of the Decree, Defendant Highland Fruit will send the EEOC a written report of
7 individuals who complained of discrimination, sexual harassment or retaliation during the prior
8 six-month period, along with an explanation as to all actions taken with regards to such
9 complaints.

10 23. Defendant Highland Fruit shall submit a final report to the EEOC 30 days before
11 the Consent Decree expires containing a statement that it has complied with all the terms of this
12 Consent Decree.

13 **E. Posting**
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15 24. Within two (2) weeks after entry of this Decree, Defendant Highland
16 Fruit shall post a notice in the form of Exhibit 1 (in both English and Spanish) attached to this
17 Decree in prominent and conspicuous location(s) in or near the employee cafeteria, lunchroom or
18 other place within Defendant Highland Fruit's facilities where employees tend to gather. The
19 notice shall remain posted for the duration of this Decree. In the event that the persons and/or
20 departments to whom individuals should make complaints alleging discrimination and/or
21 retaliation change during the term of the Decree, such that the information contained on the
22 notice is no longer accurate, Defendant Highland Fruit shall immediately prepare a new notice
23 that contains the correct information. Defendant Highland Fruit shall thereupon promptly
24 replace the old notices with the revised notices. Defendant Highland Fruit shall maintain a copy
25 of this decree in its Personnel Office for any employee who wishes to review it.

1 **VIII. ENFORCEMENT**

2 25. If the EEOC concludes that Defendant Highland Fruit has breached this
3 agreement, it may bring an action in the United States District Court for the Eastern District of
4 Washington to enforce this Consent Decree. Before bringing an action for breach of the Decree,
5 the EEOC shall first give Defendant Highland Fruit ten (10) days notice. The EEOC and
6 Defendant Highland Fruit shall use that 10-day period for good faith efforts to resolve the matter.
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8 **IX. RETENTION OF JURISDICTION**

9 26. The United States District Court for the Eastern District of Washington shall
10 retain jurisdiction over this matter for the duration of the Decree.
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12 **X. DURATION AND TERMINATION**

13 27. This Decree shall be in effect for four (4) years, commencing with the date the
14 Decree is filed. If the EEOC petitions the court for breach of agreement, and the court finds
15 Defendant Highland Fruit to be in violation of the terms of the Consent Decree, the court may
16 extend this Consent Decree.
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VI. CONCLUSION

28. The provisions of this Consent Decree are not binding on the parties until the authorized representatives for the Plaintiff EEOC and Defendant Highland Fruit sign and the court enters the Consent Decree in the court.

DATED this 28th day of January 2005.

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ORDER

The Court having considered the foregoing stipulated agreement of the parties. IT IS HEREBY ORDERED THAT the foregoing consent decree be, and the same is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter for purposes of enforcing the consent decree approved herein.

DATED this 14th day of February, 2005.

s/ Fred Van Sickle
UNITED STATES DISTRICT JUDGE